

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Casados	Team: Team # 5	CCRB Case #: 201200702	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 01/12/2012 8:25 PM	Location of Incident: 2520 Linden Boulevard	Precinct: 75	18 Mo. SOL 7/12/2013	EO SOL 7/12/2013	
Date/Time CV Reported Mon, 01/16/2012 10:24 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 01/16/2012 10:24 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Matthew Borden	20404	936227	075 PCT
2. Officers			075 PCT
3. An officer			075 PCT
4. POM Kelvin Peralta	06980	940561	075 PCT
5. POM Samuel Carey	23728	945554	075 PCT
6. POF Charisse Gonzalez	01620	940201	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Matthew Borden	Abuse: PO Matthew Borden searched the car in which § 87(2)(b) was an occupant.	
B.POM Samuel Carey	Abuse: PO Samuel Carey searched the car in which § 87(2)(b) was an occupant.	
C.POF Charisse Gonzalez	Abuse: PO Charisse Gonzalez searched the car in which § 87(2)(b) was an occupant.	
D.POM Matthew Borden	Force: PO Matthew Borden used physical force against § 87(2)(b)	
E.POM Samuel Carey	Force: PO Samuel Carey used physical force against § 87(2)(b)	
F.POM Kelvin Peralta	Force: PO Kelvin Peralta used physical force against § 87(2)(b)	
G.POF Charisse Gonzalez	Force: PO Charisse Gonzalez used physical force against § 87(2)(b)	
H. Officers	Force: Officers struck § 87(2)(b) with flashlights.	
I. An officer	Force: An officer used physical force against § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the Call Processing System on January 16, 2012 (encl. 5).

On January 12, 2012, at approximately 8:25 p.m., § 87(2)(b) went to 2520 Linden Boulevard in Brooklyn and met up with § 87(2)(b). The following allegations resulted:

- **Allegation A—Abuse of Authority:** PO Matthew Borden searched the vehicle in which § 87(2)(b) was an occupant.
- **Allegation B—Abuse of Authority:** PO Samuel Carey searched the vehicle in which § 87(2)(b) was an occupant.
- **Allegation C—Abuse of Authority:** PO Charisse Gonzalez searched the vehicle in which § 87(2)(b) was an occupant. § 87(2)(g)

- **Allegation D—Force:** PO Matthew Borden used physical force against § 87(2)(b)
- **Allegation E—Force:** PO Samuel Carey used physical force against § 87(2)(b)
- **Allegation F—Force:** PO Kelvin Peralta used physical force against § 87(2)(b)
- **Allegation G—Force:** PO Charisse Gonzalez used physical force against § 87(2)(b)

- **Allegation H—Force:** Officers from the 75th Precinct struck § 87(2)(b) with flashlights.
- **Allegation I—Force:** An officer from the 75th Precinct used physical force against § 87(2)(b)

- § 87(2)(g)
- § 87(4-b) § 87(2)(g)

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) a 5'7" tall, 165 pound black male with brown eyes, was § 87(2)(b) old at the time of the incident. He has black hair on the sides and is bald on top. § 87(2)(b)

Statement to Medical Personnel

§ 87(2)(b) arrived alone at § 87(2)(b) on § 87(2)(b). He reported that he was "assaulted by police officers on Thursday [January 12, 2012]." He complained of right hand pain, mild swelling and pain to both his shoulders, neck pain, and right thigh pain. (encl. 4).

CCRB Statement

§ 87(2)(b) provided a telephone statement via the Call Processing System on January 16, 2012 (encl. 5). He provided a second telephone statement on January 25, 2012 (encl. 6). He was

interviewed at the CCRB on February 13, 2012 (encl. 7). § 87(2)(g)

On January 12, 2012, at approximately 8:25 p.m., § 87(2)(b) went to 2520 Linden Boulevard in Brooklyn to make change for a five-dollar bill at a convenience store and to check on his van that he had parked in front of the store the night prior. § 87(2)(b) lives a couple of blocks away at § 87(2)(b). He checked on his van first, and while he was doing so, a person he has seen around his neighborhood, a black male in his 20s, came up to him and talked to him while he was sitting in the front passenger seat. The investigation identified the black male in his 20s as § 87(2)(b). § 87(2)(b) denied shaking hands with, exchanging money, or buying marijuana from § 87(2)(b). § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) then went inside the convenience store, made purchases, and then headed home in respective directions. § 87(2)(b) crossed Linden Boulevard, but before he made it to the other side, a dark-colored unmarked police car stopped beside him. An unidentified officer, whom § 87(2)(b) described as a 6' tall, muscular black male in his 30s wearing a full suit and tie, got out of the car and stopped § 87(2)(b). The officer in the suit walked § 87(2)(b) back across the street to the front of the convenience store.

At least two more police vehicles then arrived on scene, another unmarked car and a marked police van. The officers surrounded § 87(2)(b). At the CCRB, § 87(2)(b) said he did not know which officers came from which cars, but he noticed a Hispanic female in uniform, a light-skinned Hispanic male in uniform, a heavy-set Hispanic male in uniform, and a black male in plainclothes. Later on, the black male in plainclothes processed § 87(2)(b)'s arrest, and § 87(2)(b) learned his name from his property voucher, PO Matthew Borden. § 87(2)(b) said he read the heavy-set Hispanic male's shield and it said, "Gonzalez." The investigation did not identify that officer, and it is possible that § 87(2)(b) put the wrong name with the wrong officer because the investigation determined that the Hispanic female in uniform arrived in a marked van and her name is PO Charisse Gonzalez, and her partner, the light-skinned Hispanic male in uniform, was PO Kelvin Peralta.

The officer in the suit searched § 87(2)(b) placing his hands in all of his coat and jeans pockets. § 87(2)(b) further said that because he was surrounded at the time it was possible that more than one officer searched him, and it felt like more than one set of hands, but he could not say who searched him for sure aside from the officer in the suit. The officer in the suit took his keys and handed them to PO Gonzalez. She walked over to § 87(2)(b)'s van and tried to open it but could not find the right key. The officer in the suit then discovered that § 87(2)(b) had another set of keys on a clip on his belt loop. He took off the keys and handed them to one of the officers, who opened up his van; § 87(2)(b) was unsure which officer accepted his keys and opened his van. Whoever that officer was then searched throughout his van along with PO Gonzalez. § 87(2)(b) could not describe the search of his van because the officer in the suit was asking him questions at the time. § 87(2)(b) said nothing illegal was found in his van.

After the van search, all the officers walked up to § 87(2)(b) including an unidentified 5'7" tall black male in his early 30s dressed in plainclothes, who had gotten out of a Ford Expedition. The officer in the suit stood in front of § 87(2)(b) the officer from the Ford Expedition stood on his left side, and the heavy-set Hispanic male officer stood on his right. § 87(2)(b) was now standing in front of the passenger side of his van. One of the officers told § 87(2)(b) to place his hands behind his back. He did not do it and asked, "For what?" One of the officers, § 87(2)(b) assumed it was the officer from the Ford Expedition because he was on his right side, grabbed § 87(2)(b)'s right arm and tried to pull it behind his back. § 87(2)(b) used his strength to prevent the officer from pulling his arm behind his back. Together, the officers pushed § 87(2)(b) to his right, possibly to place him up against his van. § 87(2)(b)

§ 87(2)(b) poked out his right elbow and held it against his van to prevent his body from being flush against it. The officers told § 87(2)(b) not to resist arrest.

Two of the officers, § 87(2)(b) did not know which ones, grabbed § 87(2)(b) by his ankles and lifted him up. The officer in the suit was standing in front of him. § 87(2)(b) grabbed hold of the officer in the suit's clothing by his shoulder area and held on. He was now completely suspended off the ground, which § 87(2)(b) described as, "I was, like, floating." One officer on his right and one officer on his left, which § 87(2)(b) assumed was the officer from the Ford Expedition and the heavy-set Hispanic male officer, respectively, started to hit him with their flashlights. They struck him multiple times while he was suspended off the ground, on his right ribs, the backs of his legs, the back of his neck, and all over his back. When asked how many times he was struck, § 87(2)(b) said, "8, 9, 10 times," and when asked which number was correct, he said, "10, 12" times.

The officer in the suit crouched down to the ground, bringing § 87(2)(b) to the ground. On the ground, the heavy-set Hispanic male officer rubbed his boot against the back of § 87(2)(b)'s head, causing his left-eyebrow area to press into the ground, from which he sustained a scrape. The officers handcuffed him. (In his second telephone statement, § 87(2)(b) said that he was suspended off the ground, then put on the ground, and then struck with flashlights.)

§ 87(2)(b) was placed in the back of the marked van. A few minutes later, § 87(2)(b) was placed back there with him. § 87(2)(b) did not witness § 87(2)(b)'s apprehension. PO Peralta and PO Gonzalez took him and § 87(2)(b) to the 75th Precinct stationhouse.

At the stationhouse, PO Borden completed § 87(2)(b)'s arrest paperwork. § 87(2)(b) had a red mark above his left eyebrow, scrapes on his lower right leg and by his right knee, pain in his neck, and numbness in his back and right hand. He did not request medical attention.

After § 87(2)(b) was released from Brooklyn Central Booking on January 13, 2012, he and his wife went back to the 75th Precinct stationhouse. They spoke with a desk secretary and asked her for his arresting officer's name and shield number. She gave him his property and a property voucher, which contained his arresting officer's information, PO Matthew Borden, tax registry number 936227.

On § 87(2)(b), § 87(2)(b) went to § 87(2)(b) on his own. He was x-rayed and told he did not have any fractures. He was given pain killers and released.

Attempts to Contact Civilians

On October 1, 2012, the undersigned investigator contacted § 87(2)(b) to schedule a photo-array viewing. § 87(2)(b) was non-committal about scheduling a date but promised to return the call. He did not call back.

§ 87(2)(b) was not located. His address was listed on his arrest report, and on March 14, 2012, the investigator mailed him a please-call letter. It was returned by the USPS as "no such" address. The results of a LexisNexis query did not yield his phone number (encl. 25).

NYPD Statements:

Subject Officer: PO MATTHEW BORDEN

- *PO Borden, a black male, 6'1" tall, 170 pounds, with black hair and brown eyes, was § 87(2)(b) years old at the time of the incident.*
- *On the date of the incident, PO Borden was assigned to the Street Narcotics Enforcement Unit as an observation officer in the 75th Precinct. He was dressed in plainclothes. He worked from 3:00 p.m. to 11:35 p.m. He did not work in a vehicle and he partnered with PO Samuel Carey.*

Memo Book

At 8:25 p.m., PO Borden arrested § 87(2)(b) and § 87(2)(b) was arrested for criminal selling of marijuana, and § 87(2)(b) was arrested for § 87(2)(b). § 87(2)(b) resisted arrest but he was not injured. PO Borden removed § 87(2)(b)'s keys, eyeglasses, and cell phone from his person. At 11:25 p.m., PO Borden returned to the stationhouse and processed the arrests (encl. 9).

On-Line Booking Sheets

PO Borden wrote both sheets. § 87(2)(b) and § 87(2)(b) were both arrested on January 12, 2012, at 8:20 p.m., in front of 2520 Linden Boulevard. Their respective narratives indicate that § 87(2)(b) was observed selling marijuana to § 87(2)(b) for U.S. currency. § 87(2)(b)'s narrative further indicates that he flailed his arms, preventing officers from apprehending him. § 87(2)(b) was charged with § 87(2)(b) and § 87(2)(b) was charged with § 87(2)(b) (encl. 10A-10F).

Property Voucher for § 87(2)(b)

PO Borden vouchered four one-dollar bills, a cell phone and its battery, a pair of eyeglasses, and nine keys for § 87(2)(b) (encl. 10G-10K). Though requested, a voucher indicating that marijuana was vouchered was not sent to the investigator (encl. 27G).

CCRB Testimony

PO Borden was interviewed at the CCRB on May 17, 2012 (encl. 11). On January 12, 2012, at approximately 8:25 p.m., PO Borden was assigned to observation duties on the SNEU team. He and PO Carey went to 2520 Linden Boulevard, and then split up. He did not know where PO Carey went. PO Borden went to that location because there had been tips about drug deals being made there. He entered the location, a bodega, and pretended to shop. He stood in line behind § 87(2)(b) and § 87(2)(b). PO Borden overheard § 87(2)(b) ask § 87(2)(b) for a "dime bag." After § 87(2)(b) made a purchase, he and § 87(2)(b) went outside, and PO Borden followed behind them.

In front of the bodega was a white utility van. § 87(2)(b) and § 87(2)(b) walked up to it on the passenger side, and § 87(2)(b) opened the door. § 87(2)(b) reached inside the van, indicating to PO Borden that § 87(2)(b) had grabbed something, though PO Borden did not know for sure if § 87(2)(b) had grabbed anything. § 87(2)(b) then did, however, give § 87(2)(b) money, and § 87(2)(b) gave § 87(2)(b) marijuana. PO Borden was standing about three feet away from them at the time. PO Borden last observed § 87(2)(b) holding the marijuana in one of his hands. PO Borden walked away and announced over his radio to the other members of the SNEU team what he had observed.

PO Borden was out of eye sight of § 87(2)(b) and § 87(2)(b) for up to two minutes. When he returned, several members of the SNEU team were present. Not all of them were interacting with § 87(2)(b) only PO Carey and one other unrecalled officer was standing with § 87(2)(b) one on each side, and § 87(2)(b) was standing against a wall by the bodega. PO Borden did not witness § 87(2)(b)'s stop, and he did not know who stopped him, though he said there were never any officers in a suit on scene. PO Borden was not sure but thought PO Andre Blake, PO Richard Charles, PO Kelvin Peralta, and PO Jose Sandoval were also on scene. PO Borden said it was possible that PO Charisse Gonzalez was also there. There were eight officers assigned to the SNEU team that day. He did not recall a male officer named Gonzalez as being on scene, and he said at some point Sgt. Damon Martin, the SNEU supervisor, arrived on

scene, but he thought that was after § 87(2)(b) was in handcuffs. PO Borden said his team does not use a Ford Expedition.

PO Borden assumed that because § 87(2)(b) was standing in front of the bodega, he had not been stopped in the roadway. PO Borden walked up to § 87(2)(b) and § 87(2)(b) was refusing to be handcuffed by flailing his arms and keeping them away from the officers. Either PO Carey or the other officer who was there grabbed § 87(2)(b) from behind and bear hugged him and lifted him about a foot in the air and then fell with him onto the ground. PO Borden stated that no officer(s) lifted up § 87(2)(b) by his ankles, and there was never a time when § 87(2)(b) was suspended off the ground. Furthermore, no officer hit § 87(2)(b) with a kick, punch, flashlight, or any police equipment.

§ 87(2)(b) was now on the ground on his stomach, and he resisted arrest by holding his arms tightly at his sides. No officer struck § 87(2)(b) on the ground, and no officer rubbed his boot into his head. PO Borden and one other officer, possibly PO Charisse Gonzales, grabbed § 87(2)(b)'s arms and handcuffed him. PO Borden stood § 87(2)(b) to his feet. § 87(2)(b) had no visible injuries. One of the officers, PO Borden could not recall who, searched § 87(2)(b) incidental to arrest. PO Borden said he may have been the one to do it. Whoever searched § 87(2)(b) did not find the marijuana. PO Borden then took § 87(2)(b)'s van keys off his person and searched his van.

PO Borden searched § 87(2)(b)'s van because the drug transaction partially took place inside of it and because he could not find the marijuana on § 87(2)(b). PO Borden searched the van with the help of at least one other officer. He could not recall who that officer was. PO Borden and the other officer searched § 87(2)(b)'s entire van, opening all the doors, shifting items, looking under seats, and looking at all the plain-view areas. PO Borden stated that he could have temporarily impounded § 87(2)(b)'s van, but he chose not to. PO Borden ultimately found the marijuana inside the van, but he could not recall where, and vouchered it. Though PO Borden stated that PO Blake, PO Charles, PO Peralta, PO Sandoval, and PO Charisse Gonzalez were on scene, he could not recall what specific actions they took. § 87(2)(b) was also arrested on scene, but PO Borden had no part in it.

Subject Officer: PO SAMUEL CAREY

- *PO Carey, a black male, 6'7" tall, 280 pounds with black hair and brown eyes, was § 87(2)(b) old at the time of the incident.*
- *PO Carey worked from 3:00 p.m. to 11:35 p.m. He was assigned to SNEU, and he worked on foot. He was dressed in plainclothes, and he partnered with PO Matthew Borden.*

Memo Book

PO Carey did not make an entry in his memo book about the incident (encl. 12).

CCRB Testimony

PO Carey was interviewed at the CCRB on May 30, 2012 (encl. 13). § 87(2)(g)

PO Carey went with PO Borden to 2520 Linden Boulevard, but then the two of them split up. PO Carey could not recall where exactly he went, but it was close by and out of eye sight of PO Borden. PO Borden made a radio call for the field team to respond, and PO Carey returned. PO Carey did not witness the drug transaction between § 87(2)(b) and § 87(2)(b) nor did he witness § 87(2)(b)'s stop, and he never observed § 87(2)(b) in the roadway, just on the sidewalk. PO Carey handcuffed § 87(2)(b) who did not resist arrest.

PO Carey then walked closer to where PO Borden and § 87(2)(b) were, and other members of the SNEU team now were. PO Carey could not recall which officers were there. All

that he could recall about the officers was that only he and PO Borden were in plainclothes and all the other officers were in uniform. There was no officer wearing a suit, and his SNEU team does not use a Ford Expedition. Several officers, whichever ones they were, attempted to handcuff § 87(2)(b). PO Carey said he did not participate in § 87(2)(b)'s apprehension and stood back. § 87(2)(b) resisted arrest by refusing to provide his hands, which he held in front of his body. The officers tried to pull his hands behind his back but § 87(2)(b) would not let them. The apprehending officers then pulled down on § 87(2)(b)'s arms causing him to fall down. PO Carey did not know if § 87(2)(b) continued to resist on the ground, but he was handcuffed shortly after going to the ground.

PO Carey said no officer picked up § 87(2)(b). § 87(2)(b) was not suspended off the ground. § 87(2)(b) was not struck while he was standing or while he was on the ground. No officer hit him with police equipment, and no officer put his or her boot against his head on the ground. Even though PO Borden was standing with § 87(2)(b) at the time he was apprehended, PO Carey did not know if PO Borden physically participated in his apprehension.

PO Carey did not know who searched § 87(2)(b) incident to arrest. At least one other officer then started to search § 87(2)(b)'s van. PO Carey did not recall who that officer was. PO Carey then joined in the search, even though he was not instructed to do so by anyone. He did, however, know that § 87(2)(b)'s drug transaction had taken place near § 87(2)(b)'s van. PO Carey opened the sliding side door on the passenger's side, and looked around that area. He did not discover any contraband. PO Carey was unable to describe where any other officer searched inside § 87(2)(b)'s van, and he was unable to say who or how many officers participated in the van search. PO Carey did not observe any injuries on § 87(2)(b).

Subject Officer: PO CHARISSE GONZALEZ

- *PO Gonzalez, a Hispanic female, 5'5" tall, 126 pounds with brown hair and brown eyes, was § 87(2)(b) old at the time of the incident.*
- *On the date of the incident, PO Gonzalez, who has since been promoted to sergeant, was assigned to the prisoner van for the 75th Precinct SNEU team. She was dressed in uniform. She worked from 3:00 p.m. to 11:25 p.m. She partnered with PO Kelvin Peralta.*

Memo Book

At 8:25 p.m., § 87(2)(b) was stopped in front of 2520 Linden Boulevard for § 87(2)(b). PO Borden observed [the transaction] and recovered [the marijuana] on § 87(2)(b). § 87(2)(b) resisted arrest, forcing officers to use necessary force (encl. 14).

CCRB Testimony

PO Gonzalez was interviewed at the CCRB on June 21, 2012 (encl. 15). § 87(2)(g)

PO Gonzalez and PO Peralta were somewhere near the vicinity of 2520 Linden Boulevard when they received a radio request from Sgt. Martin to go there.

When PO Gonzalez arrived on scene, PO Borden was standing with § 87(2)(b) Sgt. Martin and PO Carey were also there. PO Gonzalez then said she was actually not sure if PO Carey was there. She and PO Peralta walked up to § 87(2)(b). PO Borden told § 87(2)(b) something to the effect of, "Turn around and put your hands behind your back." § 87(2)(b) did not comply. He began to flail his arms and punched and kicked at the officers. She did not know if § 87(2)(b) successfully punched or kicked an officer. At least she and PO Peralta and PO Borden tried to grab hold of § 87(2)(b)'s arms. § 87(2)(b) wrestled with the officers for his hands, and somehow the group fell to the ground in the struggle. PO Gonzalez said that to her knowledge the officers did not intentionally place § 87(2)(b) on the ground. PO Gonzalez

could not recall how § 87(2)(b) was positioned on the ground. PO Gonzalez could not say what tactics other officers used to handcuff § 87(2)(b) but she controlled one of his hands. Together, the officers were able to handcuff him.

PO Gonzalez said that PO Borden and PO Peralta assisted in § 87(2)(b)'s arrest, and PO Carey possibly did, too, but she could not recall any other officers helping, or which, if any, other officers from the SNEU team were there. She could not recall where Sgt. Martin was during the arrest. PO Gonzalez said that at no point was § 87(2)(b) lifted off the ground or struck, including with a punch, a kick, or police equipment, and no officer placed his boot on § 87(2)(b)'s head. § 87(2)(b) was stood to his feet, and she did not observe injuries on him.

One of the officers, possibly PO Borden, searched § 87(2)(b) incidental to arrest, and then one of the officers, also possibly PO Borden, then searched § 87(2)(b)'s vehicle. She did not know if PO Borden had seized § 87(2)(b)'s keys. PO Gonzalez did not notice what parts of § 87(2)(b)'s van was searched. She then said she only assumed that § 87(2)(b)'s van was searched because it was used during the drug transaction. She said it was possible that she searched § 87(2)(b)'s van, too, but did not think she had. She thought marijuana was recovered in the incident, but she did not know where or by whom.

She said there were no officers in a suit on scene and that her team does not use a Ford Expedition. She never observed § 87(2)(b) in the roadway and did not know how he was stopped. She said there were no male officers named Gonzalez on scene.

Subject Officer: PO KELVIN PERALTA

- *PO Peralta, a Hispanic male, 5'7" tall, 180 pounds with black hair and brown eyes, was § 87(2)(b) years old at the time of the incident.*
- *On the date of the incident, PO Peralta was assigned as the SNEU prisoner van operator in the 75th Precinct. He worked from 3:00 p.m. to 11:35 p.m. He was dressed in uniform, he worked in a marked van, number 8502, and he partnered with PO Charisse Gonzalez.*

Memo Book

PO Peralta made the entries on the fly sheet of his memo book (encl. 16). At 8:25 p.m., he stopped § 87(2)(b) in front of 2520 Linden Boulevard. § 87(2)(b) resisted arrest, and officers had to use force to handcuff him. § 87(2)(b) was arrested for § 87(2)(b).

CCRB Testimony

PO Peralta was interviewed at the CCRB on May 23, 2012 (encl. 17). § 87(2)(g)

PO Peralta and PO Gonzalez responded to the location because PO Borden, over the radio, requested their assistance and described a buyer and a seller of marijuana. When PO Peralta arrived, § 87(2)(b) was standing in front of the convenience store. § 87(2)(b) matched the description of the buyer. He never saw § 87(2)(b) in the roadway. He could not recall if § 87(2)(b) was under the attention of any officers, including PO Borden. PO Peralta and PO Gonzalez approached § 87(2)(b) and PO Peralta grabbed § 87(2)(b)'s arms to place him under arrest. § 87(2)(b) tried to evade him. He flailed his arms, tried to run, and pushed PO Peralta in his chest. More officers then arrived and assisted PO Peralta in apprehending § 87(2)(b). He was not sure how many or which officers assisted him. He said maybe three officers assisted him, and one of them was PO Gonzalez. But otherwise he was not sure of any other officers who assisted him, though he said, after § 87(2)(b) was handcuffed, he noticed that PO Borden was there. He said there were no officers wearing a suit there, no male officer named Gonzalez, and that his team does not use a Ford Expedition.

§ 87(2)(b) continued to resist by not providing his hands and holding them in front of his body, and he was kicking his legs. PO Peralta and the other officers pulled § 87(2)(b) to the ground. In the sequence, PO Peralta grabbed § 87(2)(b)'s right arm and pushed down on his right shoulder to make him lose his balance. § 87(2)(b) landed on his stomach. He continued to resist by not providing his hands. Together, the officers handcuffed § 87(2)(b). PO Peralta said that at no point was § 87(2)(b) lifted off the ground or struck, including with a punch, a kick, or police equipment, and no officer placed his boot on his head. § 87(2)(b) was stood to his feet, and he did not observe any injuries on him.

PO Peralta said Sgt. Martin arrived on scene after § 87(2)(b) was handcuffed, and he did not see § 87(2)(b) until he returned to his van, and he was in there. One of the officers, PO Peralta could not recall who, searched § 87(2)(b) incidental to arrest, and then § 87(2)(b)'s van was searched. He did not recall who searched § 87(2)(b)'s van, and he could not describe the van search, although he said he may have participated in it.

Officers Not Interviewed

§ 87(2)(g)

Medical Records

§ 87(2)(b) walked into § 87(2)(b) on § 87(2)(b). He complained of right hand pain, mild swelling and pain to both his shoulders, neck pain, and right thigh pain. Hospital personnel indicated that the "context" of his reported injuries were due to being kicked and pushed. Only § 87(2)(b)'s right ribs, right hand, and right wrist were examined. He had no fractures and his lungs were clear. He was diagnosed with a right-hand contusion and a contusion to his right ribs. He was given pain medication, Ibuprofen, and released to home self-care (encl. 18).

NYPD Documents

Arrest Photograph

§ 87(2)(b) appears to have a small, faint abrasion above his left eye (encl. 8A).

75th Precinct Roll Call

According to the tour 3 roll call for January 12, 2012, there were 16 officers, including supervisors, assigned to SNEU at the time of the incident. The roll call does not indicate if the SNEU officers were broken into teams and does not indicate who was partnered with whom. There were six black males assigned to SNEU, PO Matthew Borden, PO Samuel Carey, Sgt. Damon Martin, PO Ricardo Lewis, PO Andre Blake, and PO Richard Charles. There was only one Hispanic female, PO Charisse Gonzalez. The other officers were PO Jenica Nathaniel (a black female), PO Kelvin Peralta (a Hispanic male), PO Jose Sandoval (a Hispanic male), PO Justin Puccia (a white male), PO Lawrence Perrotta (a white male), PO David Rosenberg (a white male), PO James Titus (a white male), and Sgt. Adnon Radoncic (a white male). No officers named Gonzalez were assigned to SNEU. However, there was one officer named Gonzalez on the roll call, PO Geraldo Gonzalez, and he was assigned to an Impact post (encl. 19).

Memo Books

The investigator received the following officers' memo books: PO Geraldo Gonzalez, Sgt. Damon Martin, PO Richard Charles, PO Andre Blake, and PO Jose Sandoval (encl. 20).

- PO Geraldo Gonzalez did not make a memo book entry indicating he interacted with § 87(2)(b) or § 87(2)(b). At 7:40 p.m. he was issuing someone a summons, and his next entry is at 9:35 p.m. for the end of his tour.
- Sgt. Martin noted the members of the SNEU team who were present for duty, but he did not indicate who partnered with whom. At 8:28 p.m., he noted that two people were arrested at 2520 Linden Boulevard for § 87(2)(b).
- PO Charles noted he was assigned to the chase van, but he did not note who his partner was, and he made no activity entries for his tour, only the start and end of his tour.
- PO Blake noted that he worked at the stationhouse throughout his tour.
- PO Jose Sandoval noted he was assigned to the SNEU chase car. He did not indicate who his partner was, and he made no activity entries, only the start and end of his tour.

75th Precinct Command Log

§ 87(2)(b) and § 87(2)(b) were logged in at 11:25 p.m. Sgt. Martin verified their arrests. Both § 87(2)(b)s and § 87(2)(b)s physical/mental conditions were noted as “apparently normal” (encl. 21).

Status of Civil Proceedings

§ 87(2)(b) has not filed a Notice of Claim with the City of New York as of September 19, 2012, with regard to the incident, which is past the expiration date to have done so (encl. 22).

Arrest for Incident and Disposition

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian Criminal History

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian CCRB History

This is the first CCRB complaint filed by § 87(2)(b) (encl. 3).

Subject Officers’ CCRB History

- PO Matthew Borden has been a member of the service for eight years and he has no substantiated allegations (encl. 2A).
- PO Samuel Carey has been a member of the service for five years and he has no substantiated allegations (encl. 2B).
- PO Charisse Gonzalez has been a member of the service for seven years and she has no substantiated allegations (encl. 2C).
- PO Kelvin Peralta has been a member of the service for seven years and he has no substantiated allegations (encl. 2D-2E).

Conclusion

Identification of Subject Officers

Not all of the officers were identified by the investigation. § 87(2)(b) said he was stopped by a black male officer in a suit who was in his 30s, and he said a black male officer who had gotten out of a Ford Expedition used force against him. The interviewed officers said there was no officer in a suit on scene and their team does not use a Ford Expedition. According to the roll call, there were six black male officers working SNEU at the time of the incident. Only PO Peralta indicated that he may have been the first officer to stop § 87(2)(b) and he is a Hispanic male. The investigator interviewed and/or obtained all the memo books of the black male officers on the team, and there was either no indication they interacted with § 87(2)(b) or, if they admitted to being on scene, they provided a statement that was dissimilar to § 87(2)(b)s, and they did not match § 87(2)(b)s officer descriptions.

§ 87(2)(b) said the Hispanic female officer—identified by the investigation as PO Gonzalez—took his keys and searched his van along with one other officer. He could not describe the search. § 87(2)(g)

With regard to force, § 87(2)(b) said he was pushed, suspended off the ground, hit with flashlights, and, on the ground, an officer rubbed his boot on his head. Based on § 87(2)(b)s descriptions, and on officer admissions, PO Borden, PO Peralta, PO Gonzalez, and PO Carey used force against him, but because the officers denied striking § 87(2)(b) with flashlights or rubbing a boot against his head, only physical force allegations were pleaded, respectively, against the identified officers. Moreover, § 87(2)(b) thought the officers who hit him with flashlights included a heavy-set Hispanic male and a black male from a Ford Expedition, and the heavy-set Hispanic male was also the one who rubbed his boot against his head. § 87(2)(g)

Allegations Not Pleaded

A § 87(2)(g)

Investigative Findings and Recommendations

Allegation A—Abuse of Authority: PO Matthew Borden searched the vehicle in which § 87(2)(b) was an occupant.

Allegation B—Abuse of Authority: PO Samuel Carey searched the vehicle in which § 87(2)(b) was an occupant.

Allegation C—Abuse of Authority: PO Charisse Gonzalez searched the vehicle in which § 87(2)(b) was an occupant.

PO Borden observed § 87(2)(b) reach inside his van and then exchange marijuana for money with § 87(2)(b). Ultimately, PO Borden said, the marijuana was recovered. Aside from PO Gonzalez, § 87(2)(b) was not sure who searched his vehicle. PO Borden and PO Carey admitted to searching all over the van, and PO Gonzalez was not sure if she joined in the search but thought it was possible she had. PO Borden was in charge of the search because he observed the drug transaction and said he took § 87(2)(b)s vehicle keys after he could not find the marijuana on his person. Thus he initiated the van search because he could not find the

marijuana, because the transaction happened partially inside the van, and because § 87(2)(b) was under arrest at the time. PO Borden said he had the authority not just to search § 87(2)(b)'s van but to inventory it but decided not to.

In order for officers to perform a vehicle search that includes opening closed containers, they must have probable cause to believe that the vehicle contained a weapon, contraband, or evidence of a crime. People v. Smith, N.Y. App. Div. 5857 (2012-2nd Dept.). (encl. 1A-1B).

§ 87(2)(g)

Allegation D—Force: PO Matthew Borden used physical force against § 87(2)(b)

Allegation E—Force: PO Samuel Carey used physical force against § 87(2)(b)

Allegation F—Force: PO Kelvin Peralta used physical force against § 87(2)(b)

Allegation G—Force: PO Charisse Gonzalez used physical force against § 87(2)(b)

§ 87(2)(b) said he was told to place his hands behind his back, and he did not do so. The officers then forcefully tried to pull his arms behind his back, but he used his muscle strength to prevent them from doing so. He alleged he was then pushed against his van, but he continued to resist and used his elbow for leverage. Officers allegedly grabbed hold of his ankles, picked him up, and he grabbed hold of the officer in front of him, resulting in him being suspended off the ground. While suspended, he said, a heavy-set Hispanic male officer and the officer from the Ford Expedition hit him with flashlights. He was inconsistent about how many times he was struck. He first said 8 to 10 times, then 10 to 12 times. Once he was put on the ground, he said the heavy-set Hispanic male officer rubbed his boot against the back of his head, causing the area above his left eyebrow to scrape against the ground. § 87(2)(g)

§ 87(2)(b) In his second telephone statement, he said he was suspended off the ground, then put on the ground, and then struck with flashlights, rather than when he was suspended off the ground.

§ 87(2)(b)'s medical records indicate he sustained contusions to his right hand and right ribs. Medical personnel thought his injuries were sustained from pushes and kicks, § 87(2)(g)

§ 87(2)(b) His arrest photograph depicts a faint abrasion above his left eye.

The officers denied using similar force to what § 87(2)(b) alleged. They denied striking § 87(2)(b) with punches, kicks, and police equipment, and they denied that an officer rubbed his boot against § 87(2)(b)'s head. All the officers said that § 87(2)(b) refused to provide his hands, but from there, § 87(2)(g)

§ 87(2)(b) PO Borden said either PO Carey or an unidentified officer bear hugged § 87(2)(b) from behind, lifted him up, and fell with him to the ground. PO Carey denied assisting in § 87(2)(b)'s apprehension and said that unidentified officers pulled on § 87(2)(b)'s arms to bring him to the ground. PO Gonzalez said that § 87(2)(b) kicked and punched at the officers. She and the other officers then wrestled for his hands, and somehow the struggle caused the group to fall down. PO Peralta said § 87(2)(b) pushed him and kicked at the officers and then he and the other officers pulled down on § 87(2)(b)'s arms.

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

Patrol Guide Section 203-11 indicates that officers can use a level of force necessary to overcome resistance (encl. 1C).

§ 87(2)(g)

[REDACTED]

Allegation H—Force: Officers from the 75th Precinct struck § 87(2)(b) with flashlights.

Allegation I—Force: An officer from the 75th Precinct used physical force against § 87(2)(b)

As indicated above, even though the officers who reportedly struck § 87(2)(b) with flashlights, and the officer who rubbed his boot against § 87(2)(b)'s head, were not identified,

§ 87(2)(g)

[REDACTED]

§ 87(4-b) § 87(2)(g)

[REDACTED]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date